IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10943 of 2007
with
SPECIAL CIVIL APPLICATION No. 10944 of 2007
to
SPECIAL CIVIL APPLICATION No. 10949 of 2007

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMUBEN WD/O. NATHUBHAI & 3 - Petitioner(s)
Versus
GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION & 3 - Respondent(s)

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Appearance :
MR PR ABICHANDANI for Petitioner(s)
MR JK SHAH, AGP for Respondent(s) : 3
MS KRINA P.CALLA, AGP for Respondent(s) : 4

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/04/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing these petitions under Article 226 of the Constitution, Mr.Jivrajbhai Mohanbhai Vaddoriya, who is the Power of Attorney holder of the petitioners, residing at village: Bhestan, Taluka: Choryasi, District: Surat, has prayed to set aside the entire procedure undertaken by the authorities for disposing of the acquired lands of the petitioners on the pretext that it is proposed to set up High Tech Textile park. The Power of Attorney holder has further prayed to direct the authorities to utilize the lands of the petitioners for the purpose for which they were acquired and in the alternative to direct the authorities to consider the case of the petitioners for allocation of the lands to them in lieu of return of compensation received by them.

2. As all the petitions involve determination of common questions of facts and law, this Court proposes to dispose them of by this common judgment. The record shows that the

petitioners were the owners of Survey Nos.107, 108 and part of Survey No.109, situated at village Bhestan, Taluka: Choryasi, District: Surat. A proposal was received by the State Government to acquire the lands of the petitioners as well as other lands situated at village Bhestan for the public purpose of Gujarat Industrial Development Corporation (“GIDC” for short). On perusal of the said proposal, the State Government was satisfied that the lands of village Bhestan mentioned therein were likely to be needed for the said public purpose. Therefore, a Notification under Section 4 of the Land Acquisition Act, 1894 (“the Act” for short) was issued which was published in the official gazette on June 17, 1976. Thereafter, necessary inquiry was made under Section 5A of the Act and report, as contemplated by Section 5A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report, a declaration under Section 6 of the Act was made which was

published in the official gazette on April 20, 1977. The interested persons were thereafter served with notices for determination of compensation payable to them and award under Section 11 of the Act was made on January 3, 1978. It may be mentioned that the possession of the lands acquired was handed over to the acquiring body pursuant to different agreements which were executed between the owners of the lands and the officer of the acquiring body on December 18, 1975. The fact that the possession of the lands acquired was handed over to the acquiring body on December 18, 1975, is also evident from the contents of the document produced at Annexure-C to the petition. The record shows that the amount of compensation determined as payable was received by the petitioners.

The petitioners have claimed that the lands acquired were never used for the public purpose for which they were acquired and had remained unutilized till 2005. According to

the petitioners, the original owners had addressed a communication dated November 22, 2005, to the Special Land Acquisition Officer requesting him to hand over the possession of the lands acquired to them as the lands acquired were not utilized for the purpose for which they were acquired. The petitioners have stated that as no reply was received from the Special Land Acquisition Officer, another communication dated January 3, 2006, was addressed by the petitioners to the Principal Secretary, Urban Development Department, Gandhinagar, with a request to hand over possession of the lands acquired to them as they were not used by the GIDC. The grievance made by the petitioners in the petition is that the GIDC had thereafter proposed to set-up High Tech Park and plots were allotted from the lands acquired to different persons as is indicated on page 109 of the compilation, which is illegal. The petitioners have claimed that no permission of the State Government as envisaged under Section 17A of the Act was

obtained by GIDC before effecting change in use of the lands acquired nor the purpose of setting up of High Tech Park can be said to be a public purpose and therefore, disposal of the plots by the respondents to the persons whose names are indicated in communication which is at page 109 of the compilation should be regarded as illegal. What is claimed by the petitioners is that the plots were disposed of without obtaining prior sanction of the Government and therefore, the respondents should be directed to re-allocate the lands to the petitioners in lieu of return of the compensation received by them. Under the circumstances, the petitioners have filed the instant petition and claimed the reliefs to which reference is made earlier.

3. This Court has heard Mr.P.R.Abichandani, learned counsel for the petitioners as well as Mr.J.K.Shah, learned Assistant Government Pleader for the respondent No.3 and Ms.Krina P.Calla, learned Assistant Government Pleader

for the respondent No.4, at length and in great detail. This Court has also considered the documents forming part of the petition.

4. From the record of the case, it is evident that on December 18, 1975, the possession of the lands acquired was handed over to the acquiring body pursuant to private negotiations entered into between the petitioners and the officers of the acquiring body. The compensation determined as payable was also received by the petitioners. Along with the petitions, the petitioners have produced minutes of meeting dated November 24, 2005, which was held for the purpose of allotment of the lands for setting up High Tech Textile park at Pandesara Industrial Estate. It indicates that 16 plots were earmarked for setting up High Tech Textile park for which 24 applications were received, but no allotments were made. The minutes of the High Tech Textile Park Committee Meeting held on December 7, 2005, further indicates

that pursuant to the direction given by the High Court, the plots were offered to 24 applicants. Thus, there is no manner of doubt that the allotment of the plots is made pursuant to decision taken by the Committee constituted for the said purpose. The record does not indicate that the lands acquired have been arbitrarily disposed of nor the record shows that the lands acquired are being utilized for private purpose.

5. During the course of hearing of the petitions, Ms.Krina P.Calla, learned Assistant Government Pleader, has cited decision of the Supreme Court rendered on March 15, 2007, in Appeal (Civil) No.5928-5929 of 2004 filed by Tamil Nadu Housing Board against Keervani Ammal and others. From the said decision, it is evident that the Writ Petition was filed in Madras High Court praying for issuance of a Writ of Mandamus directing the State of Tamil Nadu to reconvey the lands which were acquired. The Writ Petition was filed through

the Power of Attorney. The learned Single Judge of the Madras High Court directed the State of Tamil Nadu to pass appropriate orders on the representation given on behalf of the writ petitioners. Thereupon, the writ petitioners went in Appeal against the decision of the learned Single Judge. The Division Bench directed the State of Tamil Nadu to reconvey the concerned lands of the writ petitioners. That order was challenged before the Supreme Court. While allowing the Appeals filed by the State of Tamil Nadu and setting aside all the orders passed in the Writ Petition, the Supreme Court has made following pertinent observations in paragraph 11 of the judgment:

"11. We may also notice that once a piece of land has been duly acquired under the Land Acquisition Act, the land becomes the property of the State. The State can dispose of the property thereafter or convey it to anyone, if the land is not needed for the purpose for which it was acquired, only for the market value that may be fetched for the property as

on the date of conveyance. The doctrine of public trust would disable the State from giving back the property for anything less than the market value. In State of Kerala & Ors. Vs. M.Bhaskaran Pillai & Anr. [(1997)5 S.C.C. 432] in a similar situation, this Court observed:

> *"The question emerges: whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the government should be sold only through the public auctions so that the public also gets benefited by getting higher value."*

Section 48B introduced into the Act in the State of Tamil Nadu is an exception to this rule. Such a provision has to be strictly

construed and strict compliance with its terms insisted upon. Whether such a provision can be challenged for its validity, we are not called upon to decide here."

Applying the principles laid down by the Supreme Court to the facts of the instant case, this Court finds that the lands acquired in the instant case vested absolutely in the State Government free from all encumbrances in the year 1975. The lands became the property of the State and the petitioners were divested of their title. Further, the allotment of the lands for the purpose of setting up a High Tech Textile Park cannot be said to be for private purpose. The lands have been allotted to the persons whose names are mentioned in the document produced at page 109 of the compilation pursuant to the order of the High Court which is not produced on record of the instant petitions. The plea based on the breach of provisions of Section 17A of the Act has no substance. It may be mentioned that the lands in question, with other lands, were

acquired for industrial purpose. When the lands are alloted for setting up a High Tech Textile Park at Pandesara Industrial Estate, the purpose remains the same, namely, industrial purpose. Under the circumstances, this Court is of the opinion that it was not necessary to obtain the previous sanction of the State Government as contemplated by Section 17A of the Act. Section 17A of the Act provides that when any lands vest in the State Government or in a Corporation owned by the State Government under the provisions of this Act, it shall be lawful, with the previous sanction of the State Government, to use such land also for any public purpose other than that for which its possession was taken. Essentially, this provision is enacted to check misuse of the lands vested in the Corporation. However, as observed earlier, allotment of lands for the purpose of setting up a High Tech Textile Park would be for industrial purpose and as there is no change of the purpose for which the lands were

acquired, it was not necessary for the GIDC to obtain any sanction from the Government. Moreover, even if it is assumed for the sake of argument that there is breach of Section 17A of the Act, that would not confer any right on the petitioners to claim that the lands earlier acquired should be reconveyed to them. At the best, it may affect the interest of the allottees of the plots, but on the ground of so-called breach of Section 17A of the Act, the petitioners would not be entitled to the reliefs claimed in the petitions. Moreover, there is enormous delay in instituting the instant petitions for which no plausible explanation is offered by the petitioners. This Court therefore finds that there is no substance in the petitions and the petitions are liable to be dismissed.

6. For the foregoing reasons, all the petitions fail and are dismissed.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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